

July 14, 2008

Tiverton Yacht Club  
58 Riverside Drive  
Tiverton, Rhode Island 02878

Re: Tiverton Building Official Appeal, Map 6-5, Plat/Block 70, Card/Lot 5

The following is the decision on your petition heard and decided by the Tiverton Zoning Board of Review (hereinafter, the "Board") on July 2, 2008 appealing a notice of violation issued by the Tiverton Building Official on March 12, 2008 ordering the Tiverton Yacht Club to remove a portable toilet facility (the "Use") on property they own located at 58 Riverside Drive, Tiverton, Rhode Island, at Map 6-5, Plat/Block 70, Card/Lot 5 (the "Premises") in a R40 district (the "NOV").

After the presentation of the appeal and comments from supporters and objectors to the petition to the Board at the public hearing for which due notice was given and a record kept and consideration of the facts established and the legal arguments made by the petitioner and a neighbor, the Board found that the petitioner established by sufficient evidence that the Building Official's Decision was in error and should be overturned. Specifically, the Board found that the evidence showed that the Yacht Club Premises contained a former clubhouse building that had been destroyed by fire and which had ancillary uses such as a swimming pool. The Board took notice that a decision rendered in the Newport Superior Court (NC07-0161) established that the clubhouse was considered a pre-existing legal non-conforming use of the Premises and which had been destroyed by fire (the "Decision"). The Board also found that the Yacht Club has been involved in the regulatory permitting process to rebuild the clubhouse but has encountered significant delays in that process and that the Yacht Club continues to operate the swimming pool located on the Premises since the destruction of the clubhouse. During the pendency of the clubhouse permitting process, the Yacht Club applied for and received a building permit to locate a portable toilet facility on the Premises pursuant to Heath Department regulations to enable the continued use of the swimming pool. The Board also found that on March 12, 2008, in reliance on the Decision, the Building Official issued the NOV for the Yacht Club to remove the Use on the basis that the Use was a vehicle parked in a location on the Premises where parking was not allowed pursuant to the Decision. The Board also took notice that on June 17, 2008 the Newport Superior Court refused to stay the hearing by the Board on the Yacht Club appeal or order the removal of the toilet trailer facility on a motion for same filed by neighbors to the Premises.

The Building Official testified that he determined a building permit was required for the toilet facility as it constituted a temporary structure under the State Building Code. The Building Official also testified that he originally considered the toilet facility to be a continuing permitted ancillary use of the Premises during the regulatory permitting process to re-establish the clubhouse pursuant to the Tiverton Zoning Ordinance (the

“Zoning Ordinance”). The Building Official also testified that he issued the NOV in reliance on the Decision that parking was not allowed on the Premises where the toilet trailer was located.

The petitioner argued that the Building Official’s decision constituted error as the toilet trailer was required by the Department of Health for the Yacht Club to operate the swimming pool on the Premises during the regulatory permitting process to re-establish the clubhouse use on the Premises. A neighbor made legal argument to the Board that the Board had no jurisdiction to hear the case, then made further legal argument that the Building Official action was correct and should be sustained.

The Board took notice that on June 17, 2008 the Superior Court had refused to stay the appeal or use of the toilet trailer facility. The Board also took notice that the Superior Court determined that the clubhouse was a pre-existing legal non-conforming use that could be re-established. The Board found that the Yacht Club was in the process of re-establishing the clubhouse use of the Premises but had encountered significant delays. The Board also found that the toilet trailer was required by Department of Health regulations to enable the continued use of the swimming pool during the pendency of the regulatory permitting process to re-establish the clubhouse use on the Premises. The Board found that the toiler trailers were necessary for the pool to remain in operation. The Board noted that this appeal involved a complicated issue made more difficult due to the petitioner’s and the neighbors’ dispute over the re-establishment of the clubhouse facility. Based on the foregoing findings of fact, the Board voted unanimously to grant your appeal of the Building Official’s NOV and found the toilet facility constituted an ancillary use of the Premises during the regulatory permitting process to re-establish the clubhouse use of the Premises and that the Building Official exceeded his authority or committed error in issuing the NOV to the Yacht Club to remove the toilet trailer facility from the Premises.

This decision must be recorded in the Land Evidence Records in the Town Clerk’s Office. (Please note that the appeal period (20 days) begins only after this decision is recorded and posted with the Town Clerk’s Office).

Very truly yours,

Jay Jackson, Vice-Chairman  
Tiverton Zoning Board of Review

Recorded 7-15-08  
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